

C. DUKES SCOTT
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DAN F. ARNETT
CHIEF OF STAFF

173281

March 23, 2005

Mr. Charles L.A. Terreni
Chief Clerk/Administrator
South Carolina Public Service Commission
101 Executive Center Dr., Suite 100
Columbia, SC 29210

RECEIVED
2005 MAR 23 PM 4:54
SC PUBLIC SERVICE
COMMISSION

Re: Docket No. 2005-15-C – Generic Proceeding Established Pursuant to Commission Order No. 2004-466 to Address the Appropriate Rate Classification or Rate Structure for Telephone Lines Located in Elevators and For Telephone Lines Located in Proximity to Swimming Pools.

Dear Charles:

Enclosed for filing please find the original and twenty-six (26) copies of the Direct Testimony of Office of Regulatory Staff Witness James M. McDaniel in the above referenced matter. Please date stamp the extra copy enclosed and return it to me via our courier.

Please let me know if you have any questions.

Sincerely,

C. Lessie Hammonds

CLH/cc

Enclosures

cc: All parties of record

BEFORE
THE PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA
DOCKET NO. 2005-15-C

RECORDED
2005 MAR 23 PM 4:54
SOUTH CAROLINA
PUBLIC SERVICE
COMMISSION

IN RE: Generic Proceeding Established)
Pursuant to Commission Order)
No. 2004-466 to Address the)
Appropriate Rate Classification or)
Rate Structure for Telephone Lines)
Located in Elevators and For)
Telephone Lines located in)
Proximity to Swimming Pools)
_____)

CERTIFICATE OF SERVICE

This is to certify that I, Cindy Clary, an employee with the Office of Regulatory Staff, have this date served one (1) copy of Direct Testimony of James McDaniel in the above-referenced matter to the person(s) named below by causing said copy to be deposited in the United States Postal Service, first class postage prepaid and affixed thereto, and addressed as shown below:

Patrick W. Turner, Esquire
BellSouth Telecommunications, Inc.
1600 William Street, Suite 5200
Columbia, SC 29201

John F. Beach , Esquire
Ellis, Lawhorne & Sims, PA
Post Office Box 2285
Columbia, SC, 29202

Margaret M. Fox , Esquire
McNair Law Firm, P.A.
Post Office Box 11390
Columbia, SC, 29211

Scott Elliott, Esquire
Elliott & Elliott, P.A.
721 Olive Street
Columbia, SC 29205

Stan Bugner, State Director
Verizon South, Inc.
1301 Gervais St.
Suite 825
Columbia, SC 29201

Steven W. Hamm , Esquire
Richardson Plowden Carpenter & Robinson, P.A.
Post Office Box 7788
Columbia, SC, 29202

Rufus S. Watson, Jr.
Self and Bay Meadows Homeowners Association
4700 Touchey Drive # 7
Myrtle Beach, SC, 29579


Cindy Clary

March 23, 2005
Columbia, South Carolina

173281

THE OFFICE OF REGULATORY STAFF
DIRECT TESTIMONY AND EXHIBITS
OF
JAMES M. MCDANIEL

RECEIVED

2005 MAR 23 PM 4:54

SC PUBLIC SERVICE
COMMISSION



APPROVED: OK D. Duke
CHIEF: OK D. Duke

DOCKET NO. 2005-15-C
Generic Proceeding

TESTIMONY OF JAMES M. McDANIEL

FOR

THE OFFICE OF REGULATORY STAFF

DOCKET NO. 2005-15-C

IN RE: GENERIC PROCEEDING FOR

**RATE STRUCTURE OF TELEPHONES LOCATED IN
ELEVATORS AND IN PROXIMITY OF SWIMMING POOLS**

Q. PLEASE STATE YOUR NAME, BUSINESS ADDRESS AND OCCUPATION.

A. My name is James M. McDaniel. My business address is 1441 Main Street, Columbia, South Carolina. I am employed by the Office of Regulatory Staff. I hold the position of Program Manager – Telecommunications.

Q. WOULD YOU PLEASE STATE YOUR EDUCATIONAL BACKGROUND AND YOUR BUSINESS EXPERIENCE?

A. I received a B.S. Degree in Engineering from the University of South Carolina in December of 1975. I was employed by the Public Service Commission of South Carolina in February of 1976. I worked for over 28 years in the Commission's Utilities Department. I was employed by the Office of Regulatory Staff in September 2004 to work in their Telecommunications area. Most of my career has been devoted to the regulation of the telecommunications industry in South Carolina.

Q. HAVE YOU PREVIOUSLY TESTIFIED BEFORE THIS COMMISSION?

1 A. Yes. During my tenure with the Commission, I have offered testimony in
2 proceedings concerning ratemaking, rate design, depreciation, rule making, and
3 complaints.

4 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

5 A. The purpose of my testimony is to respond to the Commission's Order No. 2004-466
6 establishing this proceeding to address the proper rate classification or rate structure
7 for telephones located in elevators and located in proximity of swimming pools.

8 **Q. BRIEFLY EXPLAIN WHAT ACTIONS THE OFFICE OF REGULATORY**
9 **STAFF UNDERTOOK IN PREPARATION FOR THIS PROCEEDING.**

10 A. In preparation for this proceeding, ORS surveyed regional state Commissions to
11 determine whether other Commissions had initiated similar proceeding to address
12 the rate classification or structure for telephones located in elevators and in
13 proximity of swimming pools. We surveyed the states of Alabama, Georgia,
14 Florida, Kentucky, Louisiana, Mississippi, North Carolina, and Tennessee. A copy
15 of the survey is attached as Exhibit JMM-1. In addition, ORS reviewed the
16 BellSouth Telecommunications, Inc. tariff for the same states.

17 **Q. DID ALL STATES RESPOND TO THE SURVEY?**

18 A. Except for the state of Louisiana, all states listed in my previous answer responded to
19 the survey.

20
21 **Q. WOULD YOU SUMMARIZE THE RESPONSES RECEIVED FROM OTHER**
22 **STATES?**

1 A. With the exception of the Florida Public Service Commission, the responding states
2 indicated that their Commission had not formally addressed similar issues. All
3 responding Commissions indicated that the business rate would be the rate applied in
4 their states.

5 **Q. PLEASE PROVIDE A BRIEF SUMMARY OF THE RESPONSE WHICH**
6 **WAS RECEIVED FROM THE FLORIDA PUBLIC SERVICE**
7 **COMMISSION.**

8 A. Information and Orders shared with ORS indicated that the Florida Public Service
9 Commission addressed the appropriate rate structure for telephones located in
10 elevators in condominiums in a generic proceeding. The Florida Public Service
11 Commission established Docket No. 920837-TL to address the issue. Information
12 shared with ORS indicates that by Order Number PSC-93-1127-FOF-TL, issued
13 August 3, 1993, the Florida Public Service Commission found that local exchange
14 companies appropriately apply business rates for telephone service located in
15 elevators and common areas of condominiums and cooperative apartments as
16 provided in each of their respective tariffs. A copy of the Order is attached as
17 Exhibit JMM-2.

18 A protest and request for a formal hearing on this matter was received, and a hearing
19 was held during May 1994. On September 27, 1994, the Florida Public Service
20 Commission issued Order Number PSC-94-1180-FOF-TL which allowed the local
21 exchange companies (LECs) to continue to charge business rates to telephones
22 located in condominium elevators. A copy of the Order is attached as Exhibit JMM-

1 3. After addressing Motions for Reconsideration, the Florida Public Service
2 Commission affirmed its Order and closed the generic docket in 1994.

3 **Q. WAS THIS ISSUE FURTHER ADDRESSED IN THE STATE OF FLORIDA?**

4 A. Additional information shared with ORS indicates that during 2003, a bill (S0334)
5 was introduced in Florida which addressed the rate for telephones located in
6 elevators. This bill would require telephone utilities in the State of Florida to charge
7 a residential rate for telephones located in elevators located in condominiums as well
8 as other locations. A review of the Florida Senate's website indicates that the
9 legislation died in Committee during May 2003. The Florida Senate Staff produced
10 an analysis which is attached as Exhibit JMM-4 for the Commission's information.

11 **Q. DID ORS PERFORM ANY OTHER INVESTIGATIONS CONCERNING**
12 **THIS MATTER?**

13 A. ORS also reviewed BellSouth Telecommunications, Inc. online General Subscriber
14 Services Tariffs. ORS primarily reviewed the tariffs to confirm the information
15 provided by representatives of state regulatory Commissions. ORS primarily
16 reviewed the language contained in the General Subscriber Services Tariff pertaining
17 to the "Application of Rates for Business and Residence Service." A review of the
18 specific language in the tariffs for each of the BellSouth served states revealed no
19 language which would designate the residential rate for access line service located in
20 elevators and in proximity of pools.

21 **Q. DO YOU HAVE ANY ADDITIONAL COMMENTS CONCERNING THIS**
22 **MATTER?**

1 A. ORS would like to comment on a few points set out in the Commission Order 2004-
2 466. In the findings contained in the Order, the cost of provision access line service
3 in a competitive environment is an important consideration for setting rates. For
4 example, in the complaint proceeding, the record indicated that the business rate,
5 which is currently applicable to access service located in elevators and in proximity
6 to swimming pools at Bay Meadows Condominiums, is already below the cost.
7 Reducing the rates to residential rate would create a situation where the service
8 would need to be subsidized by other services to a greater extent.
9 Also, pursuant to our review of the Commission Order, it appears that Bay Meadows
10 seeks elimination of the End User Carrier Common Line Charge (as referred to as
11 the Subscriber Line Charge) because the lines are restricted from toll usage. ORS
12 considers this to be a federal charge; therefore, the Commission has no jurisdiction
13 concerning the application or elimination of this charge.

14 **Q. IN CONCLUSION, DOES ORS HAVE ANY RECOMMENDATIONS?**

15 A. After consideration of the information obtained from other states and information
16 filed in Docket Number 2003-221-C and 2005-15-C, ORS is of the opinion that the
17 public interest would be better served if the Commission continues the current
18 application of business rates for access lines located in elevators and in proximity of
19 swimming pools of condominiums.

20 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

21 A. Yes, it does.

DIRECT EXHIBITS
OF
JAMES M. MCDANIEL

DOCKET NO. 2005-15-C
GENERIC PROCEEDING

EXHIBIT JMM-1

From: <Andrew.Melnykovych@ky.gov>
To: <JBMORRI@REGSTAFF.SC.GOV>
Date: 3/4/2005 2:54:55 PM
Subject: RE: Information Request

Mr. Morris-

The Kentucky PSC has not addressed these matters.

Andrew Melnykovych
Director of Communications
Kentucky Public Service Commission
502-564-3940 x208

-----Original Message-----

From: PSC - Public Information Officer
Sent: Monday, February 28, 2005 2:05 PM
To: Melnykovych, Andrew (PSC)
Subject: FW: Information Request

>
>-----
>From: Barry Morris[SMTP:JBMORRI@REGSTAFF.SC.GOV]
>Sent: Monday, February 28, 2005 2:05:19 PM
>To: psc.info@ky.gov
>Subject: Information Request
>Auto forwarded by a Rule
>

Dear Public Information Officer,

The Public Service Commission of South Carolina has initiated a proceeding to consider the appropriate rate classification or structure for telephone lines which are required by code or regulation for safety or emergency use, such as telephones located in elevators and the proximity of pools. In an attempt to gather information for the South Carolina proceeding, we are contacting each of the neighboring Southeastern states regarding relevant decisions that may relate to this area. Please take a few minutes to respond to the following two questions.

1. Has your Commission addressed classification of telephone service as residential or business service for telephones located in elevators or at pool sides? If your response is affirmative, please provide an electronic copy of your Commission's decision.

2. In South Carolina, the Commission has generally approved tariffs which classify telephones in elevators and at pool sides as business service without distinction of location, has your Commission approved tariffs which set out distinct classification of service based on where the telephone phone is located (For example, if the elevator phone is located in condominium versus a typical business)? If your response is affirmative,

please provide a copy of the specific language.

Thank you very much in advance for your response. Please contact me if you have any questions or if we may ever be of service to you.

Sincerely,

J. Barry Morris, Ph. D.
Research Administrator
Office of Regulatory Staff
1441 Main Street, Suite 300
Columbia, SC 29201

Work 803.737.0719
Cell 803.429.4250
Fax 803.737.0801

EXHIBIT JMM-2

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Investigation into) DOCKET NO. 920837-TL
proper tariffing of telephone) ORDER NO. PSC-93-1127-FOF-TL
service for elevators and common) ISSUED: August 3, 1993
areas within residential)
facilities.)
)

The following Commissioners participated in the disposition of this matter:

J. TERRY DEASON, Chairman
THOMAS M. BEARD
SUSAN F. CLARK
JULIA L. JOHNSON
LUIS J. LAUREDO

NOTICE OF PROPOSED AGENCY ACTION
ORDER REGARDING ELEVATOR TELEPHONES

BY THE COMMISSION:

NOTICE IS HEREBY GIVEN by the Florida Public Service Commission that the action discussed herein is preliminary in nature and will become final unless a person whose interests are adversely affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

Background

On February 19, 1992, Clipper Bay Condominium Association, Inc. and several other condominium associations (Clipper Bay) filed a complaint against United Telephone Company of Florida (United) regarding the rates charged for elevator telephones. On March 16, 1992, United filed its Answer to Clipper Bay's Complaint and a Motion to Dismiss. On March 24, 1992, the Office of Public Counsel (OPC) filed a response to United's Motion to Dismiss.

By Order No. PSC-92-0625-FOF-TL, issued on July 7, 1992, we found that under United's tariff the elevator telephones at issue were appropriately charged business rates. However, we recognized that for electric service, the common areas of condominiums are billed as residential. Thus, an issue regarding the appropriate rates to charge for telephone service in condominium elevators was included in the United Telephone rate case (DN 910980-TL).

On July 20, 1992, OPC filed a protest to our Proposed Agency Action Order issued in the Clipper Bay complaint docket. Since

all Local Exchange Company (LEC) tariffs contain essentially the same criteria for the application of rates, and any decision made in the United rate case would ultimately affect all LECs, we determined in the rate case that it was most appropriate to address the issue in a generic proceeding. The instant docket was opened to investigate the proper tariffing of telephone service for elevators and common areas within residential facilities. Consequently, OPC withdrew its protest to the July 7, 1992, Order issued in the Clipper Bay docket, and that docket was closed.

Analysis

As discussed above, all of the Florida LECs use essentially the same criteria to classify telephone service as either business or residential: that is, the character of the subscriber and/or the primary use to be made of the service¹. While the primary use of a condominium elevator telephone would be to call for help in the event of emergency and the actual user of the service would normally be a resident of the condominium, the subscriber to the telephone service is the condominium association and its use of the service is to provide for the safety and well being of the residents and other users of the elevators. Thus, the character of use under the tariffs is business. However, we note that electric service for elevators in condominiums is classified as residential. The electric industry decisions are found at Order No. 4074, issued September 26, 1966, in Docket No. 7697-EU, as modified by Order 4150, issued March 2, 1967.

In order to achieve parity with the electric industry, residential rates would need to be assessed for telephone service located in elevators as well as all common areas including pool houses, recreation rooms, lobbies, office space housing a condominium association (or similar organization), subject to the criteria defined in the electric industry orders referenced above. The electric orders set forth a convincing case for the classification of common area telephones as residential; however, they fail to adequately address the fact that the subscriber to the service in question is a corporation. Although ownership of the corporation is most often held by the people residing in these

¹ A tariff change recently approved for Southern Bell modified the primary use criterion. Southern Bell now defines primary business use at residential locations based on whether or not the subscriber requests a business listing in the Southern Bell directory.

types of facilities, this does not mitigate the fact that the condominium association itself is a business entity.

Moreover, the adoption of the electric industry's standards for telephone rates would create administrative problems associated with the following four requirements which are analogous to those set forth in the electric industry order:

1. 100% of the telephone service is used exclusively for the co-owner's benefit.
2. No telephone calls are placed in connection with any endeavor which sells or rents a commodity or provides service for a fee.
3. Each demarcation point is separately billed.
4. A responsible legal entity is established as the customer to whom the company can render its bills for telephone service.

Parity between the industries would create a certification process for telephone service and our experience has been that significant problems are created when certification of the use of a telephone line is mandated as in the case of leaky PBX and hybrid key systems. Indeed, it is apparent that the rate status of a given condominium would be subject to constant changes under the terms of the foregoing criteria.

Upon review, we find that the subscribers of the telephone service in question are appropriately classified as businesses. Thus, the Florida LECs shall continue to apply business rates for telephone service located in elevators and common areas of residential facilities as currently approved in each of their respective tariffs. We note that private line circuits and other telephone services, for which no distinction is made between business and residence, are sometimes used in elevators. In those cases the services shall remain as currently billed.

Therefore, it is

ORDERED by the Florida Public Service Commission that local exchange companies appropriately apply business rates for telephone service located in elevators and common areas of condominiums and cooperative apartments as provided in each of their respective tariffs. It is further

ORDER NO. PSC-93-1127-FOF-TL
DOCKET NO. 920837-TL
PAGE 4

ORDERED that, absent a timely protest, this docket shall be closed at the end of the PAA protest period which is set forth below.

By ORDER of the Florida Public Service Commission this 3rd day of August, 1993.

STEVE TRIBBLE, Director
Division of Records and Reporting

(S E A L)

CWM

Chairman Deason dissented from this decision.

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

The action proposed herein is preliminary in nature and will not become effective or final, except as provided by Rule 25-22.029, Florida Administrative Code. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, as provided by

ORDER NO. PSC-93-1127-FOF-TL
DOCKET NO. 920837-TL
PAGE 5

Rule 25-22.029(4), Florida Administrative Code, in the form provided by Rule 25-22.036(7)(a) and (f), Florida Administrative Code. This petition must be received by the Director, Division of Records and Reporting at his office at 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the close of business on August 24, 1993.

In the absence of such a petition, this order shall become effective on the day subsequent to the above date as provided by Rule 25-22.029(6), Florida Administrative Code.

Any objection or protest filed in this docket before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.

If this order becomes final and effective on the date described above, any party adversely affected may request judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or by the First District Court of Appeal in the case of a water or wastewater utility by filing a notice of appeal with the Director, Division of Records and Reporting and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days of the effective date of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Investigation into proper tariffing)	DOCKET NO. 920837-TL
of telephone service for elevators and)	ORDER NO. PSC-94-1180-FOF-TL
common areas within residential)	ISSUED: September 27, 1994
facilities.)	
)	
)	

The following Commissioners participated in the disposition of this matter:

J. TERRY DEASON, Chairman
SUSAN F. CLARK
JULIA L. JOHNSON
DIANE K. KIESLING

APPEARANCES:

MICHAEL A. GROSS, Esquire, PL-01, The Capitol, Tallahassee, Florida 32399-1050,
on behalf of Robert A. Butterworth, Attorney General of the State of Florida.

JEFF WAHLEN, Esquire, Post Office Box 165000, Altamonte Springs, Florida 32716-
5000, on behalf of Central Telephone Company of Florida and United
Telephone Company of Florida.

KIMBERLY CASWELL, Esquire, P. O. Box 110, MC 7, Tampa, Florida 33601, on behalf
of GTE Florida Incorporated.

ROBERT G. BEATTY, Esquire, and PHILLIP CARVER, Esquire, 150 South Monroe Street,
Suite 400, Tallahassee, Florida 32301, on behalf of Southern Bell Telephone
and Telegraph Company.

HAROLD McLEAN, Esquire, Office of Public Counsel, 111 West Madison Street,
Room 812, Tallahassee, Florida 32399-1400, on behalf of the Citizens of the
State of Florida.

MICHAEL BILLMEIER, Esquire, and TRACY HATCH, Esquire, Florida Public Service
Commission, 101 East Gaines Street, Tallahassee, Florida 32399-0863, on
behalf of the Commission Staff.

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PAGE 2

PRENTICE P. PRUITT, Esquire, 101 East Gaines Street, Tallahassee, Florida 32399-0863, on behalf of the Commissioners.

FINAL ORDER

BY THE COMMISSION:

I. Background

On February 19, 1992, Clipper Bay Condominium Association, Inc. (Clipper Bay) and several other condominium associations filed a complaint against United Telephone Company of Florida (United) regarding the rates charged for elevator telephones. On March 16, 1992, United filed its answer to Clipper Bay's Complaint and a Motion to Dismiss. On March 24, 1992, the Office of Public Counsel (OPC) filed a response to United's Motion to Dismiss.

By Order No. PSC-92-0625-FOF-TL, issued on July 7, 1992, we found that, under United's current tariff, the elevator telephones at issue were appropriately charged business rates. However, we acknowledged that for electric service, the common areas of condominiums are billed as residential. Thus an issue concerning the appropriate rates to charge for telephone service in condominium elevators was included in the United Telephone rate case (Docket No. 910980-TL).

On July 20, 1992, OPC filed a protest to our July 7, 1992 Order issued in the Clipper Bay complaint docket. Since all local exchange company (LEC) tariffs at that time contained essentially the same criteria for the application of rates, and any decision made in the United rate case would affect all LECs, we determined that it was most appropriate to address the issue in a generic proceeding. This docket was opened to investigate the proper tariffing of telephone service for elevators and common areas within residential facilities. Consequently, OPC withdrew its protest to the Order issued in the Clipper Bay Docket and that docket was closed.

By Order No. PSC-93-1127-FOF-TL, we proposed that business rates were appropriate for telephone service located in elevators and common areas of condominiums and cooperative apartments as provided in each of their respective tariffs. On August 19, 1993, Clipper Bay filed a protest to that Order and requested a formal hearing under Section 120.57, Florida Statutes.

Parties intervening in this docket included Clipper Bay Condominium Association (Clipper Bay), Cinnamon Cove Terrace Condominium I Association (Cinnamon Cove), Estero Sands Condominium Association (Estero), the Office of Public Counsel (OPC), the Office of the Attorney General (Attorney General), Central Telephone Company of Florida (Centel), United Telephone Company of Florida (United), GTE Florida Incorporated (GTEFL), and Southern Bell Telephone and Telegraph Company (Southern Bell). Clipper Bay, Cinnamon Cove, and Estero did not file pre-hearing statements, participate in the hearing, nor file post-hearing statements. Pursuant to Section 25-22.056(3)(a),(b), Florida Administrative Code, Clipper Bay, Cinnamon Cove, and Estero have waived their positions and were dismissed from this proceeding.

Order No. PSC-94-1080-PHO-TL set forth the issues to be addressed during this proceeding. The hearing on these issues was held May 25, 1994. Among the issues addressed were the requirements of Florida Law regarding devices for communication in a condominium elevator, the available technology, and this appropriate rates for interconnection with the local exchange companies. Our decisions regarding these issues are set forth below.

II. Legal Requirements

The parties did not contest the applicable legal requirements. The parties proposed following stipulation:

Generally, elevators installed in Florida since 1978 are required to have a "means of two-way conversation between the car and a readily accessible point outside the hoistway which is available to emergency personnel (telephone, intercom, etc.). The means to activate the two-way conversation system does not have to be provided in the car." Rule 211.1(a)(2), ASME, A17.1 (National Standard Safety Code for Elevators and Escalators) adopted in Florida by Rule 61C-5.001, Florida Administrative Code.

We approved the stipulation at the beginning of the hearing.

III. Available Technology

The evidence presented at the hearing showed five general methods which can be used to comply with the legal requirements. These methods are:

1. A LEC provided switched access line
2. An extension off of a PBX or switchboard
3. An intercom system
4. A dedicated (private) line or "ring-down" system
5. A line seizure device

Witness Thompson provided descriptions of various methods of providing two-way communication in an elevator. The most common method is via the installation of a telephone instrument in the elevator cab that is connected to a single line business rate (B1), LEC furnished dial line. Currently, the LECs charge this line a single line business rate. To reduce monthly costs, the elevator line can be installed as an extension from an existing telephone line in the facility, or from the facility's PBX or switchboard.

Several witnesses described an intercom system as another method to provide communications to and from an elevator. Under this scenario, lines from the elevator car are connected to a manual monitoring post in the building. Pushing a button on the elevator intercom panel alerts the monitoring post, which can then engage in a voice conversation with the elevator. Because of the high initial installation costs, as well as the continuing monitoring expense, the intercom system has been used only by a small percentage of customers, specifically by those facilities with personnel on the premises on a twenty-four-hour basis.

Another method for providing two-way communications in an elevator is a dedicated private line. GTEFL's witness Menard testified that a private line can be installed from an elevator to a customer's monitoring location and that private line service can be ordered from GTEFL. Southern Bell's witness Dick also testified that a condominium association could establish a dedicated private line between the elevator and an answering point such as an off-premises security station. Witness Thompson describes this method as a "ring-down" method, where no dialing is required because an off-hook condition at either end automatically rings the other instrument and allows two-way calling.

Witness Thompson testified that the intercom and ring-down systems are more expensive than the LEC provided switched access line method and that a high percentage of customers for elevator phone service used an extension from a switched line to provide two-way communication. Witness Thompson also indicated that the "ring-down" system was the most costly system since it required the use of point to point telephone lines, special exchange circuits, and telephone instruments that are provided by the LEC on a monthly basis. There are also additional charges for monitoring or answering services.

ORDER NO. PSC-94-1180-FOF-TL
DOCKET NO. 920837-TL
PAGE 5

Witness Thompson further testified that a line-seizure device can be used to provide two-way communications in an elevator. A line-seizure device uses an existing telephone line that serves the premises, such as the office phone. The device seizes control of

the line when a call is placed from the elevator and dials the monitoring office. We note that the line-seizure device and monitoring service are supplied by witness Thompson's company.

Based on the evidence presented at the hearing, we find that condominium associations are not limited to switched access line service for the provision of two-way communications in an elevator. A condominium association can choose a LEC provided switched access line, an intercom system, a dedicated line, an extension from another phone or switchboard, or a line seizure device to fulfil its obligation to provide communications to elevators.

IV. Appropriate Rates For LEC Provided Lines

Currently, the LECs apply B1 rates to telephones in elevators. In their respective tariffs, GTEFL, United, and Centel determine the appropriate rate based on the character of use of the service. Business rates apply whenever the use of the service is primarily of a business, professional, institutional, or occupational nature. Business rates apply for establishments such as offices, stores, factories, mines, and other business establishments. Residential rates apply when the service's use is of a domestic nature. Residential rates apply to private residences not employing business listings, private apartments, private stables, and fraternity house rooms.

OPC witness Poucher argued that character of use meant the use by telephone user, the condominium residents, and not the subscriber to the service. An elevator phone is intended for the use of condominium residents and their guests. Since elevator telephones are used by condominium residents, witness Poucher argues that they should be assessed a residential rate.

Southern Bell's tariff differs from the other LECs but it also charges a business rate to phones in condominium elevators. Southern Bell witness Dick testified that the rate Southern Bell charges for phone service is based on the location of the phone. Phones at business locations are charged a business rate and phones at residential locations are charged a residential rate. Witness Dick also testified that the character of the subscriber is used to determine appropriate rates and since the subscriber to the service, the condominium association, is a business entity, the elevator phone service that condominium associations subscribe to should be assessed a business rate.

Witness Poucher also took issue with Southern Bell's interpretation of its tariff. Notwithstanding Southern Bell's argument that a condominium elevator is on a business location, witness Poucher contends that an elevator telephone is located in a residential facility and should be charged a residential rate.

Only witness Dick estimated the revenue loss if we were to change the rates from business to residential and he conceded that figure was just a guess. Witness Dick testified further that Florida ratepayers could suffer the burden of subsidizing condominium associations via increased rates to other ratepayers.

We find that LECs should be allowed to continue applying business rates to telephones located in condominium elevators. While we believe that calls made with these telephones will be made primarily by condominium residents, condominium associations use elevator phone service to fulfill legal obligations and enhance the safety of condominium residents. This includes meeting the requirement of installing a communications device in an elevator. This is a business activity and business rates should apply to a switched telephone line. The condominium residents can receive residential rates in their units but an elevator is not a residential facility. We agree that an elevator is not in itself a business location. However, the one strong indication as to whether the location of service is business or residential is the type of customer making the request. Since the condominium association is a business entity making the request for phone service, a business rate is appropriate.

We note that two LECs, Southern Bell and GTEFL, offer a business message rate option. This option offers business customers a less expensive option for local exchange service. Condominium associations located in areas where the service is available may wish to investigate this option.

Based on the foregoing, it is

ORDERED BY the Florida Public Service Commission that Florida law requires a means of two-way communication in an elevator between the elevator and the outside, as described in the body of this Order. It is further

ORDERED that there are various ways of fulfilling this obligation and each entity should investigate the options and determine which best suits its needs. It is further

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ORDERED that the Florida local exchange companies may continue to charge business rates for switched access lines to condominium elevators. It is further

ORDERED that this docket is hereby closed.

By ORDER of the Florida Public Service Commission, this 27th day of September, 1994.

BLANCA S. BAYÓ, Director
Division of Records and Reporting

by:
Chief, Bureau of Records

(S E A L)

LMB

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of Records and Reporting within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water or sewer utility by filing a notice of appeal with the Director, Division of Records and Reporting and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of

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Civil Procedure. The notice of appeal must be in the form specified in Rule 9.900 (a), Florida Rules of Appellate Procedure.

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/ SB 334

SPONSOR: Communication & Public Utilities Committee and Senator Saunders

SUBJECT: Telecommunications Service/ Elevators

DATE: March 11, 2003

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wiehle	Caldwell	CU	Favorable/CS
2.			CP	
3.				
4.				
5.				
6.				

I. Summary:

The bill requires phone companies that provide telephone service to certain elevators to offer that service at the company's residential service rate.

This bill creates section 364.108 of the Florida Statutes.

II. Present Situation:

Every elevator in Florida is required to have a means of two-way conversation between the elevator car and a readily accessible point outside the hoistway which is available to emergency personnel. Rule 211.1(a)(2), ASME, A17.1 (National Standard Safety Code for Elevators and Escalators), adopted by Chapter 61C-5, F.A.C., the Florida Elevator Safety Code, pursuant to s. 399.02, F.S.

The Florida Public Service Commission (PSC) has an order in place, order number PSC-94-1180-FOF-TL, issued September 27, 1994, that authorizes local telephone companies to charge business rates for service to elevators in condominium elevators. The PSC's reasoning was that: rates are determined based on the character of use of the service; the customer for condominium elevator phone service is the condominium association, a business entity, not the residents; and the condominium associations use elevator phone service to fulfill legal obligations and enhance the safety of condominium residents, a business activity to which business rates should apply. The PSC made these findings despite the arguments of the Office of Public Counsel that character of use should be determined by the actual telephone user, which was argued to be the condominium residents and their guests.

Business rates are approximately twice the amount of residential rates.

III. Effect of Proposed Changes:

The bill creates s. 364.108, F.S., to require each telecommunications company that provides telephone service to any elevator that is under the control of a condominium or homeowners' association, a residential cooperative, a government-financed housing facility for the elderly, or a continuing care facility to offer that service at the company's residential local telecommunications service rate.

The bill takes effect July 1, 2003.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:**A. Tax/Fee Issues:**

Section 202.12, F.S., imposes a tax on sales of communications services stated as a percentage of the sales price of the communications service. The bill will lower the revenue of local telephone companies by an undetermined amount, which they may or may not seek a rate increase hearing to recoup. If not, this decrease in phone revenue will in turn lower the communications services tax revenues by an undetermined amount.

B. Private Sector Impact:

The bill requires local telephone companies to provide service to certain elevators at the companies' residential service rate. These companies currently charge a business rate, which is approximately twice the residential rate. The bill will therefore result in a decrease in the telephone service rate for service to these elevators. As no one knows how many elevators are at issue, the total amount of the decrease in rates is undeterminable.

In general, condominium, homeowners, and cooperative associations will have an undetermined decrease in expenses, which they should pass on to property owners in a proportioned decrease in assessments and dues. Government-financed housing facilities for the elderly and continuing care facilities will also have decreased costs, which may be passed on to residents.

Local phone companies would lose an undetermined amount of revenue. Section 364.051(4), F.S., provides that any local telecommunications company that believes circumstances have changed substantially to justify any increase in the rates for basic local services may petition the PSC for a rate increase. However, the PSC may grant the petition only after an opportunity for a hearing and a compelling showing of changed circumstances. The companies may choose not to go through such a hearing to get the rate increase to make up the loss.

C. Government Sector Impact:

There could be a decrease in communications services tax revenues. There could also be an impact on the PSC if local telephone companies seek hearings to increase rates.

VI. Technical Deficiencies:

None.

VII. Related Issues:

In its 1994 order, the PSC noted that there were a number of alternatives available to condominium associations to provide elevator communication services. Since then, with technological advances and deregulation of local telephone markets, there are additional alternatives available.

The bill appears to be contrary to the current public policy of competition in the local telephone marketplace.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

By Senator Saunders

37-84-03

1 A bill to be entitled
2 An act relating to telecommunications
3 companies; creating s. 364.108, F.S.;
4 prescribing the rate for telecommunications
5 service provided to certain elevators;
6 providing penalties; providing an effective
7 date.
8
9 Be It Enacted by the Legislature of the State of Florida:
10
11 Section 1. Section 364.108, Florida Statutes, is
12 created to read:
13 364.108 Rate for telephones in certain
14 elevators.--Each telecommunications company that provides
15 telephone service to any elevator that is under the control of
16 an association, as defined in s. 718.103, or a homeowners'
17 association, as defined in s. 720.301, must offer that service
18 at a rate that is the same as the company's residential local
19 telecommunications service rate.
20 Section 2. This act shall take effect July 1, 2003.
21
22 *****
23 SENATE SUMMARY
24 Requires telecommunications companies providing service
25 to elevators under the control of condominium
26 associations or homeowners' associations to provide it at
27 the same rate as for local residential service.
28
29
30
31

By the Committee on Communication and Public Utilities; and
Senator Saunders

319-1910-03

1 A bill to be entitled
2 An act relating to telecommunications
3 companies; creating s. 364.108, F.S.;
4 prescribing the rate for telecommunications
5 service provided to certain elevators;
6 providing penalties; providing an effective
7 date.
8
9 Be It Enacted by the Legislature of the State of Florida:
10
11 Section 1. Section 364.108, Florida Statutes, is
12 created to read:
13 364.108 Rate for telephones in certain
14 elevators.--Each telecommunications company that provides
15 telephone service to any elevator that is under the control of
16 an association, as defined in s. 718.103, or a homeowners'
17 association, as defined in s. 720.301, a residential
18 cooperative, as defined in chapter 719, a government-financed
19 housing facility for the elderly, or a continuing care
20 facility licensed under chapter 651, must offer that service
21 at a rate that is the same as the company's residential local
22 telecommunications service rate.
23 Section 2. This act shall take effect July 1, 2003.
24
25 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
26 COMMITTEE SUBSTITUTE FOR
27 SB 334
28 The committee substitute for Senate Bill 334 specifies
29 additional types of entities to which elevator phone service
30 must be provided at residential rates, including residential
31 cooperatives, government-financed housing facilities for the
elderly, and continuing care facilities.